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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 PHILADELPHIA INDEMNITY
12 INSURANCE COMPANY,

13 Plaintiff,

14 v.

15 COMMUNITY ACTION COUNCIL OF
16 LEWIS, MASON AND THURSTON
17 COUNTIES, a Washington non-profit
corporation, and THURSTON COUNTY, a
governmental entity and political subdivision,

18 Defendants.

19 No.: _____

20 COMPLAINT FOR DECLARATORY
21 RELIEF

22 Plaintiff Philadelphia Indemnity Insurance Company files this Complaint for
23 Declaratory Relief against Defendants Community Action Council of Lewis, Mason and
24 Thurston Counties and Thurston County.

25 **I. THE PARTIES**

26 1.1 Plaintiff Philadelphia Indemnity Insurance Company (“PIIC”) is an insurance
company organized under the laws of the Commonwealth of Pennsylvania, with its principal
place of business located in Bala Cynwyd, Pennsylvania.

1 1.2 Defendant Community Action Council of Lewis, Mason and Thurston
 2 Counties (“CAC”) is a Washington non-profit corporation with its principal office located in
 3 Lacey, Washington. CAC is a citizen of the State of Washington.

4 1.3 Defendant Thurston County is a political subdivision of the State of
 5 Washington and/or a municipal corporation. Thurston County is a citizen of the State of
 6 Washington for diversity jurisdiction purposes. *See Moor v. Alameda Cty.*, 411 U.S. 693
 7 (1973); *King Cty. v. Viracon, Inc.*, No. 2:19-CV-508-BJR, 2019 WL 5569675, at *1 (W.D.
 8 Wash. Oct. 29, 2019).

9 II. **JURISDICTION AND VENUE**

10 2.1 Complete diversity of citizenship between the parties exists because PIIC and
 11 the defendants are citizens of different states. 28 U.S.C. § 1332(a)(1)-(3). In addition, the
 12 amount in controversy exceeds \$75,000, exclusive of interest and costs. Accordingly, this
 13 Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1332(a) and
 14 2201(a).

15 2.2 Venue is proper pursuant to 28 U.S.C. § 1391(b) because a substantial part of
 16 the events or omissions giving rise to the claim at issue occurred in this Judicial District.
 17 Assignment to this Division is also appropriate because the events giving rise to the claim at
 18 issue occurred in Thurston County, Washington.

19 III. **FACTS**

20 3.1 PIIC incorporates by reference the allegations set forth above in Paragraphs
 21 1.1 through 2.2.

22 3.2 This declaratory judgment action seeks rulings regarding PIIC’s obligations
 23 under commercial insurance policies issued by PIIC to CAC regarding contractual claims for
 24 reimbursement of funds asserted against CAC by Thurston County (the “Underlying
 25 Claims”).

1 **A. The Underlying Claims**

2 3.3 On August 8, 2024, Thurston County sent a letter to CAC demanding payment
 3 in the amount of \$251,835.49 for reimbursement of housing assistance funds disbursed by
 4 CAC to ineligible recipients (the “Demand Letter”). The allegations set forth in paragraphs
 5 3.4 through 3.10 below are based on the allegations contained in the Demand Letter and its
 6 enclosures and other information obtained by PIIC regarding this matter.

7 3.4 This matter arises from CAC’s work administering Emergency Rental
 8 Assistance (“ERA”) funds to low-income community members. CAC administered these
 9 funds under contracts it entered into with Thurston County. The period of performance for
 10 the first set of contracts, No. 2021-TRAP-CAC-RA and No. 2021-ComTRAP-CAC-RA
 11 (collectively, the “ERA-1 Contracts”), was from February 16, 2021 to December 31, 2021
 12 and April 6, 2021 to September 30, 2022, respectively. The period of performance for the
 13 second contract, No. 2021-TRAP2-CAC-RA (the “ERA-2 Contract”) was from September 1,
 14 2021 to September 30, 2024.

15 3.5 The ERA funds were provided by the United States Department of the
 16 Treasury to the State of Washington and Thurston County pursuant to appropriations
 17 proscribed by Congress during the COVID-19 pandemic. The State distributed some of its
 18 funds to Thurston County. Thurston County retained CAC to solicit applications from
 19 community members, determine eligibility for assistance, and disburse the funds for the
 20 benefit of eligible applicants.

21 3.6 On January 24, 2022, Thurston County’s auditor provided written
 22 recommendations to CAC for improving compliance with the ERA program requirements
 23 and its internal controls following the County’s monitoring of CAC’s work in late 2021.
 24 These recommendations included implementation of additional fraud prevention procedures
 25 and improved internal controls. CAC responded to the County’s recommendations by
 26 objecting to them as inconsistent with the requirements set forth in their contracts and

1 requesting that they be incorporated directly into the contract language. CAC also noted that
 2 some of the recommendations were contrary to the goal of reducing barriers for providing
 3 housing assistance to low-income community members. Following this exchange, meetings
 4 were held and additional correspondence was sent between CAC and the County.

5 3.7 The contracts between CAC and Thurston County were suspended by the
 6 County on February 23, 2022 due to suspected fraud found by the County Auditor. CAC
 7 denied that fraud occurred and then terminated its ERA contracts with the County.

8 3.8 Thurston County proceeded with a more comprehensive audit of CAC's
 9 disbursement of ERA funds in 2022. According to its letter dated July 19, 2024, the County's
 10 audit found multiple instances of fraud with respect to ERA funds administered by CAC. The
 11 County reported these instances to the United States Department of Treasury pursuant to
 12 federal regulations. The County further advised that it would seek recoupment of funds
 13 improperly disbursed by CAC.

14 3.9 The Demand Letter enclosed two Notice of Recoupment letters authored by
 15 the Department of Treasury. These letters described 16 separate instances of ERA funds
 16 obtained by applicants who should not have received funds under the applicable rules and
 17 regulations. Thurston County's demand for payment by CAC was expressly based on
 18 provisions in the ERA-1 Contracts requiring CAC to reimburse the County for ERA
 19 payments made to ineligible recipients.

20 3.10 In the Demand Letter, Thurston County further advised that it anticipated
 21 seeking reimbursement of an additional \$416,154.15 from CAC for funds disbursed to
 22 ineligible recipients under the ERA-2 Contract. Accordingly, Thurston County stated that the
 23 total amount of funds to be repaid by CAC would be \$667,989.64.

24 3.11 On August 7, 2024, CAC submitted Notice of a Potential Claim to PIIC based
 25 on Thurston County's July 19, 2024 letter to CAC. This Notice referred to Directors &
 26 Officers Liability coverage provided under Policy No. PHSD1837449.

1 3.12 On August 13, 2024, CAC forwarded the Demand Letter to PIIC by e-mail.
 2 PIIC treated this communication from CAC as a tender of the claims asserted in the Demand
 3 Letter.

4 **B. The Package Policies**

5 3.13 PIIC issued a Commercial Lines Policy, number PHPK2198356, to CAC as
 6 the named insured. This policy was in effect from November 1, 2020 to November 1, 2021.
 7 This policy was renewed under Policy No. PHPK2342020 with a policy period of November
 8 1, 2021 to November 1, 2022. These policies will be hereinafter referred to as the “Package
 9 Policies.”

10 3.14 The Package Policies provide human services organization professional
 11 liability (“HSOP”) coverage under the terms and conditions contained therein. The HSOP
 12 coverage provided by the Package Policies is subject to limits of \$1,000,000 each
 13 professional incident and \$2,000,000 aggregate. The Package Policies contain the same
 14 pertinent terms and conditions.

15 3.15 The Package Policies contain the following insuring agreement for HSOP
 16 coverage:

17 **SECTION I – COVERAGE**
 18 **HUMAN SERVICES ORGANIZATION**
 19 **PROFESSIONAL LIABILITY**

20 **A. Insuring Agreement**

- 21 1. We will pay those sums that the insured
 becomes legally obligated to pay as “damages”
 arising out of a “professional incident” in the
 course of performing professional services for,
 or on behalf of, your human services
 organization to which this insurance applies. We
 have the right and duty to defend any “suit”
 seeking those “damages”. We may at our
 discretion investigate and settle any
 “professional incident, subject to **SECTION IV –**

1 **CONDITION K**, any claim or “suit.” But:

- 2 a. The amount we will pay for “damages” is
3 limited as described in **SECTION III – LIMITS**
4 **OF INSURANCE**; and
- 5 b. Our right and duty to defend ends when we
6 have used up our applicable limit of
7 insurance in the payment of judgments or
8 settlements.
- 9 2. This insurance applies to “damages” only if:
- 10 a. The “damages” result from a “professional
11 incident” that takes place in the “coverage
12 territory”; and
- 13 b. The “professional incident” occurs during
14 the policy period:

15 PI-HS-003 (07/04).

16 3.16 The Package Policies contain the following exclusions for HSOP coverage:

17 **SECTION I – COVERAGE**
18 **HUMAN SERVICES ORGANIZATION**
19 **PROFESSIONAL LIABILITY**

20 ...

21 **B. Exclusions**

22 This insurance does not apply to “damages”:

- 23 1. Expected or intended from the standpoint of the
24 insured.
- 25 2. For any actual or alleged breach of contract or
26 agreement. This exclusion does not apply to
 liability for “damages” that the insured would
 have in the absence of the contract or
 agreement.

27 ...

- 28 20. Arising out of any criminal, dishonest,
29 fraudulent or malicious act or omission. This

exclusion does not apply to any insured who did not:

- a. Personally participate in committing any such act; or
 - b. Remain passive after having personal knowledge of any such act or omission.

3

22. Arising out of acts, errors or omissions of a managerial or administrative nature.

PI-HS-003 (07/04).

3.17 The Package Policies contain the following provisions regarding the duties of an insured for HSOP coverage:

SECTION IV – CONDITIONS

C. Duties In The Event Of Professional Incident, Claim Or Suit

1. You must see to it that we are notified as soon as practicable of a “professional incident” which may result in a claim. To the extent possible, notice should include:
 - a. All available information about the circumstances concerning the “professional incident” including:
 - (1) How, when and where it took place; and
 - (2) The names and addresses of any witnesses and persons seeking “damages”; and
 - b. What claim you think may result.

However, even when you notify us of a “professional incident”, this does not relieve

you of your obligation to also notify us of any resulting claim or "suit".

2. If a claim is made or "suit" is brought against any insured, you must:
 - a. Immediately record the specifics of the claim or "suit" and the date received; and
 - b. Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

 - 3. You and any other involved insured must:
 - a. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
 - b. Authorize us to obtain records and other information;
 - c. Cooperate with us in the investigation, settlement or defense of the claim or "suit";
 - d. Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply; and
 - e. In no way jeopardize our rights after a "professional incident".
 - 4. No insureds will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

PI-HS-003 (07/04).

3.18 The Package Policies contain the following definitions of pertinent HSOP coverage terms:

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we",

1 "us" and "our" refer to the company providing this
2 insurance.

3 The word "insured" means any person or organization
4 qualifying as such under Section **II – WHO IS AN
INSURED.**

5 Other words and phrases that appear in quotation
6 marks have special meaning. Refer to Section **V –
DEFINITIONS**

7 ...
8 **SECTION V – DEFINITIONS**
9 ...

10 E. **"Damages"** means a monetary:

- 11 1. Judgment;
- 12 2. Award; or
- 13 3. Settlement,

14 but does not include fines, sanctions, penalties,
15 punitive or exemplary damages or the multiple
portion of any damages.

16 P. **"Professional incident"** means any actual or
17 alleged negligent:

- 18 a. Act;
- 19 b. Error; or
- c. Omission

20 in the actual rendering of professional services to
21 others, including counseling services, in your
22 capacity as a human services organization.
23 Professional services includes the furnishing of
24 food, beverages, medications or appliances in
connection therewith.

25 Any or all "professional incidents" arising from
26 interrelated or series of acts, errors or omissions
shall be deemed to be one "professional incident"
taking place at the time of the earliest "professional
incident."

1 **Q. "Suit"** means a civil proceeding in which
 2 "damages" are sought and to which this insurance
 3 applies. "Suit" also includes:

- 4 1. An arbitration proceeding in which such
 5 "damages" are sought and to which you must
 6 submit or do submit with our consent; or
 7 2. Any other alternative dispute resolution
 8 proceeding in which such "damages" are
 9 sought and to which you submit with our
 10 consent.

PI-HS-003 (07/04).

3.19 The Package Policies contain the following condition:

SECTION IV – CONDITIONS

...

L. Two or More Coverage Parts Or Policies Issued By Us

It is our stated intention that the various coverage parts or policy issued to you by us, or any company affiliated with us, do not provide any duplication or overlap of coverage for the same claim or "suit". If this policy and any other coverage part or policy issued to you by us, or any company affiliated with us, apply to the same "professional incident", occurrence, offense, wrongful act, accident or loss, the maximum Limit of Insurance under all such coverage parts or policies combined shall not exceed the highest applicable Limit of Insurance under any one coverage part or policy.

This condition does not apply to any Excess or Umbrella Policy issued by us specifically to apply as excess insurance over this policy.

PI-HS-003 (07/04).

3.20 The Package Policies contain the following endorsement regarding reimbursement of defense costs:

1 **WASHINGTON CHANGES – DEFENSE COSTS**

2 This endorsement modifies insurance provided under
3 the following:
4 ...
5

6 **COMMERCIAL GENERAL LIABILITY COVERAGE PART**
7 ...
8

9 **A.** The provisions of Paragraph B. are added to all
10 Insuring Agreements that set forth a duty to defend
11 under:
12 ...
13

- 14 **1.** **Section I** of the Commercial General
15 Liability,...Coverage Parts, ...;
16 ...
17

18 Paragraph **B.** also applies to any other provision in
19 the policy that sets forth a duty to defend.
20

21 **B.** If we initially defend an insured ("insured") or pay
22 for an insured's ("insured's") defense but later
23 determine that none of the claims ("claims"), for
24 which we provided a defense or defense costs, are
25 covered under this insurance, we have the right to
26 reimbursement for the defense costs we have
 incurred.
 The right to reimbursement under this provision
 will only apply to the costs we have incurred after
 we notify you in writing that there may not be
 coverage and that we are reserving our rights to
 terminate the defense or the payment of defense
 costs and to seek reimbursement for defense costs.
IL 01 23 11 13.

21 **C. The FPF Policy**

22 3.21 PIIC issued a Commercial Lines Policy, number PHSD1837449, to CAC with
23 a policy period of November 1, 2023 to November 1, 2024 (the "FPF Policy").
24

25 3.22 The FPF Policy provides Directors and Officers Liability ("D&O") coverage
26

1 on a claims-made basis. D&O Coverage is limited to \$1,000,000 per policy period and
2 subject to a \$25,000 per claim retention.

3 3.23 The FPF Policy contains the following insuring agreements for D&O
4 coverage:

Part 1

Not-for-Profit Organization Directors & Officers Liability Insurance

(To be read in conjunction with the Common Policy Definitions, Exclusions, and Conditions Sections, Parts 6, 7, 8 below)

I. INSURING AGREEMENTS

- A. The **Underwriter** will pay on behalf of the **Individual Insured**, **Loss** from **Claims** made against **Individual Insureds** during the **Policy Period** (or, if applicable, during the Extension Period), and reported to the **Underwriter** pursuant to the terms of this Policy, for **D&O Wrongful Acts**, except to the extent the **Organization** has indemnified the **Individual Insureds** for such **Loss**.
 - B. The **Underwriter** will pay on behalf of the **Organization**, **Loss** from **Claims** made against **Individual Insureds** during the **Policy Period** (or, if applicable, during the Extension Period), and reported to the **Underwriter** pursuant to the terms of this Policy, for **D&O Wrongful Acts**, if the **Organization** has indemnified such **Individual Insureds** for such **Loss**.
 - C. The **Underwriter** will pay on behalf of the **Organization**, **Loss** from **Claims** made against the **Organization** during the **Policy Period** (or, if applicable, during the Extension Period), and reported to the **Underwriter** pursuant to the terms of this Policy, for a **D&O Wrongful Act**.

1 **II. DEFINITIONS**

2 **A. D&O Wrongful Act** means any actual or alleged:

- 3 1. Act, error, omission, misstatement,
 misleading statement, neglect, breach of
 duty or **Personal & Advertising Injury**
 committed or attempted by an **Individual**
 Insured in his/her capacity as an **Individual**
 Insured or any other matter claimed against
 any **Individual Insured** solely by reason of his
 or her status as an **Individual Insured**.

8 PI-NPD-2 (01/02), as modified by PI-NPD-82 (10/22).

9 3.24 The FPF Policy contains the following exclusions:

10 **Part 7**

11 **Common Policy Exclusions**

12 The **Underwriter** shall not be liable to make any
 payment for Loss in connection with any **Claim** made
 against the **Insured**:

14 ...

- 15 A. Arising out of, based upon or attributable to such
 Insured gaining any profit, remuneration or
 advantage to which they were not legally entitled;
 however, this exclusion shall only apply if a final
 and non-appealable judgment or adjudication in
 the underlying action establishes the Insured
 committed such act or omission;
- 19 B. Arising out of, based upon or attributable to any
 dishonest or fraudulent act or omission or any
 criminal act or omission by such **Insured**; however,
 this exclusion shall only apply if a final and non-
 appealable judgment or adjudication establishes
 the **Insured** committed such act or mission...;
- 23 C. Arising out of, based upon or attributable to any
 actual or alleged liability under any written or oral
 agreement; however, this exclusion shall not apply
 to liability which would have attached even in the
 absence of such contract or agreement.

1 [This exclusion] will not apply to **Claims** with
 2 respect to coverage provided under Section I.
 3 **INSURING AGREEMENTS, Paragraph A.**

4 PI-NPD-2 (01/02), as modified by PI-NPD-82-(10/22) and PI-NPD-133 (10/14).
 5

6

7 **PROFESSIONAL SERVICES EXCLUSION**
 8 **(SUPERVISION CARVE-OUT)**

9

10 This endorsement modifies and is subject to the
 11 insurance provided under the following:

12

13 **FLEXIPLUS FIVE**

14

15 The Policy is amended as follows:

16

17 With respect to coverage under Part 1, the
 18 **Underwriter** shall not be liable to make any payment
 19 for **Loss** in connection with any **Claim** made against
 20 the **Insured** based upon, arising out of, directly or
 21 indirectly resulting from or in consequence of, or in
 22 any way involving the **Insured's** performance of or
 23 failure to perform professional services for others.

24

25 Provided, however, that the foregoing shall not be
 26 applicable to any derivative action **Claim** alleging
 27 failure to supervise those who performed or failed to
 28 perform such professional services.

29 PI-NPD-25 (1-02).

30

31 3.25 The FPF Policy contains the following definitions of pertinent terms used
 32 therein:

33

34

35 **Part 6**
 36 Common Policy Definitions

37

38 B. **Claim** means for the purpose of Parts 1, 2, 3, and

39 5:

- 40
- 41 1. Any written demand for monetary or non-
 42 monetary relief (including injunctive); or
- 43
- 44 2. Any civil proceeding, including any appeals
 45 therefrom, commenced by the filing, notice

1 or service of compliant, pleading, summons
 2 or similar document; or
 3
 4

5. Any arbitration, mediation or similar
 6 alternative dispute resolution proceeding
 7 commenced by receipt of a demand for such
 8 proceeding;

9
 10 Against an **Insured** for a **Wrongful Act**,
 11 including any appeal therefrom; or
 12
 13

14 A **Claim** shall be considered made when an
 15 **Insured** first receives notice of the **Claim**.
 16

17
 18 C. **Damages** means a monetary judgment, award
 19 or settlement, including punitive and exemplary
 20 damages or multiple portion thereof, (including
 21 pre and post judgment interest thereon) to the
 22 extent such punitive and exemplary damages or
 23 multiple portion thereof, are insurable under
 24 applicable law of any jurisdiction which has a
 25 substantial relationship to the **Insured** or to the
 26 **Claim** seeking such damage, and which is most
 favorable to the insurability of such damage.

17
 18 F. **Individual Insured** means:

- 19 1. Any individual who has been, now is or will
 20 become a director, officer, governor, trustee,
 21 equivalent executive, employee (whether
 22 salaried or not), volunteer, intern,
 23 management committee member, risk
 24 manager, in-house counselor member of the
 25 Board of Managers of the **Organization**,
 26 or,...Solely in regard to Parts 1 and 3,
Individual Insured includes member of an
 Advisory Board; any past employee, director,
 officer, governor, trustee, volunteer,
 management committee member, risk
 manager, in-house counsel, member of the

Board of Managers of the Organization retained as a fiduciary or plan consultant to the **Benefit Plan**; provided that for the purpose of determining the **Organization's** indemnification obligation to any such consultants, each consultant shall be deemed a director or officer of the **Organization**. Accordingly, the **Organization** shall be deemed to have granted indemnification to each consultant to the fullest extent permitted by statutory or common law to the same extent as any director or officer of the **Organization**;

G. Insured means the **Organization** and **Individual Insured**.

I. Loss means:

1. Damages;
 2. Defense Costs;

but **Loss** does not include:

- a. fines or penalties imposed by law...; or

b. taxes; or

- c. matters deemed uninsurable under the law to which this Policy shall be construed; or

- d. any amounts other than **Defense Costs**, which an **Insured** is obligated to pay as a result of a **Claim** seeking relief or redress in any form other than monetary damages; or

J. Organization means:

- ## **1. The Parent Organization,**

K. **Parent Organization** means the first entity named in Item 1. of the Declarations.

N. **Underwriter** means the stock insurance company check marked on the Declarations of this Policy.

O. Wrongful Act means:

1. With respect to Part 1, any **D&O Wrongful Act**,

| PI-NPD-2 (01/02), as modified by PI-NPD-82 (10/22).

3.26 The FPF Policy contains the following condition:

Part 8

Common Policy Conditions

**XVIII. TWO OR MORE COVERAGE PARTS OR
POLICIES ISSUED BY THE UNDERWRITER**

It is the **Underwriter's** stated intention that the various coverage parts or policies issued to the **Parent Organization** by the **Underwriter**, or any affiliated company, do not provide any duplication or overlap of coverage for the same **Claim** or **Workplace Violence Act**.

Notwithstanding the other insurance provision, if this Policy and any other policy issued to the **Parent Organization** by the **Underwriter**, or any affiliated company, apply to the same **Wrongful Act, Workplace Violence Act**, professional incident, occurrence, offense, accident or **Loss**, then the maximum Limit of Liability under all such policies combined shall not exceed the highest applicable Limit of Liability under any one policy.

PI-NPD-2 (01/02).

1 3.27 The Package Policies and the FPF Policy are hereinafter collectively referred
 2 to as the “Policies.”

3 **D. PIIC agreed to defend CAC, but reserved its rights.**

4 3.28 CAC tendered the Underlying Claims to PIIC.

5 3.29 Although PIIC believed the Policies do not afford coverage for the Underlying
 6 Claims, PIIC agreed to appoint and pay for counsel to defend CAC. PIIC did so, however,
 7 while reserving all rights under the Policies and applicable law, including the right to
 8 conclude no coverage is afforded by the Policies and to file a declaratory judgment lawsuit—
 9 like this one—seeking a court’s guidance regarding PIIC’s obligations under the Policies and
 10 whether PIIC may withdraw its defense of CAC in this matter.

11 3.30 On September 19, 2024, PIIC sent a letter to CAC advising that there may not
 12 be coverage under the Policies, but PIIC had nevertheless agreed to defend the CAC against
 13 the Underlying Claims as a matter of good faith and subject to a full reservation of rights.
 14 This letter advised that PIIC was reserving its rights to terminate the defense and/or payment
 15 of defense costs. This letter further advised that PIIC was reserving its right to seek
 16 reimbursement of defense costs under the Package Policies.

17 **IV. ACTUAL CASES AND CONTROVERSIES UNDER THE**
 18 **POLICIES**

19 4.1 PIIC incorporates by reference the allegations set forth above in Paragraphs
 20 1.1 through 3.30.

21 4.2 There is an actual and justiciable controversy as to whether any coverage is
 22 available under the terms of the Policies with respect to the Underlying Claims.

23 4.3 There is an actual and justiciable controversy regarding whether PIIC is
 24 obligated to continue to defend CAC with respect to the Underlying Claims.

25 4.4 There is an actual and justiciable controversy as to whether the Underlying
 26 Claims include a claim for loss or “damages” arising from a “professional incident” and/or

1 arising out of CAC's performance of or failure to perform professional services for others, as
 2 defined or described by the Policies.

3 4.5 There is an actual and justiciable controversy as to whether the Underlying
 4 Claims include a "Claim" for "Damages" made against CAC for "D&O Wrongful Acts," as
 5 those terms are defined by the FPF Policy.

6 4.6 There is an actual and justiciable controversy as to whether any damages
 7 sought against CAC with respect to the Underlying Claims are based on its actual or alleged
 8 liability under any written or oral agreement, actual or alleged breach of contract, or
 9 assumption of liability in a contract, and CAC would not be liable for such damages in the
 10 absence of the contract or agreement.

11 4.7 There is an actual and justiciable controversy as to whether CAC's liability for
 12 damages with respect to the Underlying Claims was based on its intentional or fraudulent
 13 conduct.

14 4.8 There is an actual and justiciable controversy as to whether the other
 15 exclusions contained in the Policies apply to preclude coverage for the Underlying Claims.

16 4.9 There is an actual and justiciable controversy as to whether CAC has breached
 17 the duties it owes under the Policies and has caused actual and substantial prejudice to PIIC
 18 in this matter as a result.

19 4.10 There is an actual and justiciable controversy as to whether the more than one
 20 of the Policies or coverages provided by the Policies apply to the Underlying Claims and
 21 whether the limits of such coverages for this matter shall not exceed the highest limit under
 22 any one policy.

23 4.11 There is an actual and justiciable controversy as to whether PIIC is entitled to
 24 reimbursement of the costs, including attorney fees, it has paid or will pay to defend CAC
 25 against the Underlying Claims.

4.12 PIIC reserves the right to assert any other provisions, exclusions, or grounds for which coverage for the Underlying Claims may be precluded under the Policies.

V. CLAIMS FOR DECLARATORY RELIEF

5.1 PIIC incorporates by reference the allegations set forth above in Paragraphs 1.1 through 4.11.

5.2 PIIC is entitled to Declaratory Judgment in its favor stating that:

(a) PIIC does not owe any duty to defend CAC against the Underlying Claims;

(b) PIIC may withdraw its defense of CAC against the Underlying Claims;

(c) PIIC is entitled to reimbursement of the costs, including attorney fees,

it paid to defend CAC against the Underlying Claims; and

(d) PIIC does not owe any coverage or duty to indemnify CAC under the Policies with respect to the Underlying Claims.

VI. PRAYER FOR RELIEF

Philadelphia Indemnity Insurance Company, having specifically alleged the foregoing, requests the following relief:

6.1 Declaratory judgment in favor of PIIC as described above.

6.2 For any recoverable attorney fees and/or costs it incurred in bringing this action to the extent allowed by law.

6.2 For such further relief as the Court deems just, proper, and equitable.

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COMPLAINT FOR DECLARATORY RELIEF

PAGE 20 Bullivant|Houser|Bailey PC
925 Fourth Avenue, Suite 3800
Seattle, Washington 98104
Telephone: 206.292.8930

1 DATED: April 18, 2025

2 BULLIVANT HOUSER BAILEY PC

3 By

4 
5 Westin McLean, WSBA #46462
6 E-mail: westin.mclean@bullivant.com

7 *Attorney for Plaintiff Philadelphia Indemnity*
8 *Insurance Company*

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